

circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the savings association or its members.

However, no indemnification shall be made unless the association gives the Office at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the Regional Director, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the OTS advises the association in writing, within such notice period, of his or her objection thereto.

(d) *Insurance.* A savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no savings association may obtain insurance which provides for payment of losses of any person incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a savings association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (e) shall prevent the directors of a savings association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the savings association. Before making advance payment of expenses under this paragraph (e), the savings association shall obtain an agreement that the savings association will be repaid if the person on whose behalf payment is made is later deter-

mined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No savings association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

[54 FR 49492, Nov. 30, 1989, as amended at 56 FR 59866, Nov. 26, 1991; 60 FR 66717, Dec. 26, 1995]

**§§ 545.123–545.125 [Reserved]**

**§§ 545.127–545.130 [Reserved]**

**§ 545.132–545.135 [Reserved]**

**§ 545.138 Data-processing services.**

(a) *Authorization.* A Federal savings association may engage in any permissible activity or service by using data processing equipment or technology, and may provide data processing and data transmission services to others on a for-profit basis as permitted by this section. An association may establish and maintain an office to provide such services to others without observing the application and approval procedures for branch offices set forth in this part.

(b)(1) *Permissible data.* The data to be processed or transmitted by a Federal savings association pursuant to paragraph (a) of this section must be financial, economic, or related to thrift, home financing, or the activities of depository institutions.

(2) *Customer restrictions.* A Federal savings association must provide data processing and transmission services primarily for itself, other depository institutions (including the parent or a subsidiary of either), and persons with whom the Federal savings association has established a loan or deposit relationship. A Federal savings association may also provide such services to other

persons if the services constitute less than one half of the data processing services provided under paragraphs (a) and (b) of this section.

(3) *Facilities.* In conjunction with providing services pursuant to paragraphs (a) and (b) of this section, a Federal savings association may supply data processing software, documentation, and operating personnel. Any such facilities, as well as those used by the Federal savings association, must be designed and operated for the processing or transmission of permissible data.

(c) *By-products and excess capacity.* As an incident to providing data processing and data transmission services pursuant to paragraph (b) of this section, a Federal savings association may:

(1) Market by-products of such services (including software and compilations of data) to any person, only if the by-products are not designed, created, or substantially enhanced primarily for the purpose of such marketability, and

(2) Market excess capacity of its data processing facilities, provided that the involvement of the Federal savings association is limited to furnishing access to its facilities and providing the necessary operating personnel, and that the Federal savings association has not artificially created excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate its present or expected future needs for providing permissible data processing services.

(d) *Controls.* A Federal savings association providing data processing services or marketing excess capacity to any person under this section shall establish internal and system controls for both hardware and software such that the integrity of its records and those of its depositors and customers are adequately protected. At a minimum, the controls shall be consistent with Generally Accepted Auditing Standards. Any agreement pursuant to which the Federal savings association provides data processing services shall contain a provision that generally describes the security measures so taken.

(e) *Contract and tying restrictions.* Any contract for data processing services authorized by this section shall incor-

porate the relevant limitations specified herein and state that the Federal savings association's facilities are to be used only for the processing and transmission of permissible data. A Federal savings association providing such services under this section shall comply with the anti-tying provisions of section 5(q) of the Act.

(f) *Participation.* A Federal savings association may participate with others in establishing or maintaining a data processing office: *Provided,* That the Federal savings association may participate in establishing or maintaining a data processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Office that it will permit and pay for such examination of the office as the Office deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the Office.

#### § 545.139—545.140 [Reserved]

#### § 545.141 Remote Service Units (RSUs).

(a) *Definitions.* As used in this section—

(1) *Generic data* means statistical information which does not identify any individual accountholder.

(2) *Personal security identifier* (PSI) means any word, number, or other security identifier essential for an accountholder to gain access to an account.

(3) *Remote service unit* (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal savings association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the